



DEPARTMENT OF JUSTICE

CHRISTINE A. VARNEY
Assistant Attorney General
Antitrust Division
U.S. Department of Justice

**JOINT DOJ AND USDA AGRICULTURE WORKSHOPS:
CONCLUDING REMARKS**

**Remarks as Prepared for the
Final Public Workshop Exploring Competition Issues in Agriculture**
Joint Department of Justice and Department of Agriculture Workshops

Washington, D.C.

December 8, 2010

Thank you all for joining us today at our final workshop, and thank you to Secretary Vilsack and the U.S. Department of Agriculture for hosting this event and, more importantly, for your partnership in these workshops and in other efforts to ensure competition and opportunity in our nation's agricultural sector. We have forged an excellent relationship with the USDA and with all of you since first announcing these workshops over a year ago.

Before starting with my remarks, I want to take the opportunity to thank the staff at the Antitrust Division, along with the staff at the USDA, for their efforts in planning and executing these workshops. In particular, I would like to thank Mark Tobey, our Special Counsel for State Relations and Agriculture, who took the lead for the Antitrust Division in this endeavor. It is their hard work and dedication that made this conversation possible and productive.

In August 2009, when we announced these workshops, we set an ambitious agenda. The Department of Justice and the USDA share the strong conviction that a healthy, competitive agricultural sector is not only vitally important to our nation's economy but also a matter of national security and public health. Hearing concerns from producers about changes in the agricultural marketplace, we decided to explore competition issues affecting the agricultural sector in the 21st Century. We resolved to explore a number of different commodities and to tackle a number of important issues, including concentration in processing, buyer power, and vertical integration. Never

before had the Department of Justice and the Department of Agriculture worked together on this scale to address competition and regulatory issues, but the time was ripe.

Our organizations were committed to these workshops at the highest levels, with Attorney General Holder and Secretary Vilsack attending individual workshops and providing strong support and encouragement. That both Cabinet members attended and participated in these workshops demonstrates the Administration's dedication to and keen interest in the issues confronting our nation's agriculture industries.

From the start of these workshops, our primary aim has been to listen and learn. We wanted to take advantage of the opportunity to learn from those with real world experience in the agricultural sector—from the farmers, ranchers, cooperatives, processors, retailers, and others in the industry—as well as from academics and attorneys who have devoted their careers to this area. We have also tried to foster greater dialogue and build partnerships among industry stakeholders inside and outside of government. The best way to foster competitive and open agricultural marketplaces is to engage those with knowledge of and a stake in the agricultural sector.

I am pleased to report that we have learned a great deal and built important relationships. We have covered a lot of ground, both substantively and geographically, travelling around the country to discuss a wide range of issues and industries. In

March, we inaugurated the workshops in Ankeny, Iowa, focusing on crop and hog farming. Topics that generated intense discussion included technological developments and intellectual property rights in genetically modified seeds, market transparency, and the increase in contract production in the hog industry.

In May, we moved to Normal, Alabama, where we talked about the poultry industry. Participants examined issues such as vertical integration, grower compensation, farm upgrades, and other contracting issues.

In June, we proceeded to Madison, Wisconsin to discuss the dairy industry. The audience and panelists highlighted a number of crucial issues, including the thin spot market for cheese, the milk-marketing order system, and the impact of consolidation at the processor and retail levels.

We also visited Fort Collins, Colorado in August to explore the livestock sector. We heard discussion of increased use of contracting for risk management, concentration in processing, packer ownership of livestock, and trends in value-added products and niche marketing, among other issues.

In addition, I travelled to Vermont with Senators Leahy and Sanders on dairy issues and then joined Senator Schumer in New York to meet and hear from his state's dairy farmers.

Today, we conclude the workshops with an examination of margins along the supply chain from producers to consumers. This was a recurring theme at prior

workshops, with consumers and producers alike wondering about the differences between the prices farmers get for their crops and animals and the prices of food items at the grocery stores.

We have enjoyed broad participation in the workshops, with more than 3,500 participants through the first four workshops. Hundreds of farmers, ranchers, cooperative members, processors, and others turned out at each workshop to listen and share their thoughts. There were about 750 participants in Iowa, 450 in Alabama, 650 in Madison, and more than 1,700 in Colorado. Farmers and other stakeholders came from as far as Maine and California. They came from farms ranging from a few hundred acres to several thousand acres, each bringing a unique perspective. We heard testimony from farmers, other industry participants, and academic experts who delved into specific issues like market concentration and market transparency. In addition, we heard voluminous public comment from members of the audience that provided the perspectives of those in the fields and on the ranches every day.

In these sessions, we heard loud and clear that many of America's producers are struggling to keep their farms and ranches afloat. Many producers talked about lower prices and a lack of transparency as to how prices were set. For example, one dairy farmer explained that, in recent years, "roller coaster" milk prices complicated his business planning, and others expressed concern about a lack of transparency in milk pricing and the potential for the manipulation of milk prices. A hog producer

expressed related concerns about the loss of local processing facilities and how that affected his ability to obtain fair prices. Some producers discussed a lack of market access and the power that buyers exercise. For example, one rancher said that he typically has just one or two potential buyers, never more than three, and that this problem is compounded by the fact that packers who need cattle will start with the biggest producers in the area and work their way down, often leaving few marketing outlets for small ranchers.

For many producers, higher input costs exacerbated their woes. For example, many crop farmers talked about the high costs of seeds, and one poultry farmer stated that his propane costs had jumped from \$42,000 to \$92,000 in just a decade. Also, some producers claimed that the farmers who contract to raise or sell animals are forced to accede to onerous terms. At the poultry workshop in Normal, one grower told me that he feared that his processor would retaliate against him for speaking his mind. I replied—and I reiterate today—that the Department of Justice and the USDA will not tolerate retaliation and intimidation, and told him to contact me directly with any concerns. Just last week, a different poultry producer contacted me with similar concerns, and we are looking into them.

Some farmers and ranchers even pondered the fate of the rural communities as they have known them. Some, whose families had farmed for generations, voiced doubt that their sons and daughters would be able to follow them. One participant told

us of the passing of once vibrant communities that were built upon hog production but are now deserted. Some talked about the human costs of declining rural economies, including bankruptcies, foreclosures, and even suicides.

We also heard that producers are meeting these challenges with the vigor and determination that has characterized our agricultural sector throughout our nation's history. Producers are thinking about ways to add value to their products and exploring new marketing opportunities. For example, one dairy farmer told me that he and his family had started a fluid-milk delivery service in order to recapture some of the retail dollar, and one rancher explained that her family, along with five other families, had established a cooperative to sell premium meat directly to consumers, retailers, and restaurants.

Some producers described how advances in science and technology and new management techniques have led to greater productivity. For example, one dairy farmer reported that her milk production per cow had more than doubled over the past twenty years and that, since 1944, the carbon footprint of milk has fallen by 63 percent. Some producers deemed contracting a positive development. For example, one producer identified poultry growing arrangements as a great opportunity for younger and beginning farmers who otherwise may not have access to the capital needed to start an operation and stated that growing arrangements shift some risk from the grower to the integrator. A number of producers saw potential for expanded sales in foreign

markets, with, for example, one farmer targeting China as enormous opportunity for pork producers. Finally, many, many producers told me how cooperatives empowered them to bargain effectively and expressed great pride in the quality of the products that their cooperatives bring to market.

We have witnessed great cooperation from other parts of the government. We at the Antitrust Division believe that vigorous enforcement of the antitrust laws and competition advocacy are a key to ensuring competitive agricultural markets, but we know that our efforts are only one part of the solution. Accordingly, it was vital for us to have the participation of, among others, senators, congressmen, governors, state attorneys general, state secretaries of agriculture, the Commodity Futures Trading Commission, the Federal Trade Commission, and, of course, USDA. These parties have different toolkits and all share our deep commitment to competition and opportunity in agriculture.

The Antitrust Division emerges from these workshops better equipped to ensure that our nation's farmers, processors, and consumers reap the benefits of competitive agricultural markets. It is our role to enforce the antitrust laws and advocate for competition in the agricultural sector, and the stories we heard at the workshops confirmed the importance of these efforts. We currently are challenging the Dean Foods acquisition of Foremost Farms, and we stand vigilant against violations of the antitrust laws. The knowledge we gained at the workshops will aid us in identifying and

prosecuting conduct that violates the antitrust laws, and enforcement in the agricultural sector remains a priority.

We likewise are committed to competition advocacy efforts in the agricultural sector, and stand ready to share our expertise with other governmental actors tackling thorny questions of competition and regulation in the agricultural sector. The antitrust laws, which have a limited—but essential—role in safeguarding the competitive process, are by no means a panacea for the challenges facing the agricultural sector. There are additional laws, regulations, and institutions that serve to promote competition and that advance other social goals in the agricultural sector. We appreciate that government regulation plays an important role in the agricultural economy, and we hope that our expertise can inform the regulatory process and help see that regulatory means match regulatory ends. The relationships that we have built will ensure that the lines of communication remain open and that we can marshal the best thinking to tackle the problems facing the agricultural community.

I know, and say with pride, that our strong partnership with USDA will continue. These workshops are a testament to our close working relationship, and we have created a joint task force to determine how we can best utilize what we learn in these workshops to help promote competition in our nation's agricultural marketplaces. Additionally, we are committed to providing USDA whatever assistance it desires as it promulgates new regulations under the Packers and Stockyards Act.

We are not alone in our work. The Obama Administration as a whole is committed to ensuring that America's rural economy is vibrant. Last year, at the President's direction, cabinet members visited rural communities across the country and engaged thousands in a conversation about how the private sector and federal, state, and local governments can work together to strengthen rural America. The Administration has made major investments in the farm safety net, provided emergency support to struggling dairy farmers, opened important international markets to American agricultural products, invested in teachers and rural colleges, and modernized rural infrastructure like roads, police stations, libraries, health clinics, and community centers. We know, however, that there is more potential for economic growth in rural America, and we will continue to pursue the successful strategies of today and the compelling opportunities of tomorrow.

Before I bring John Ferrell back to the dais to start the public testimony, let me assure those who shared their time and expertise with us that your contributions have been invaluable. I am especially grateful for all those farmers and ranchers who travelled, at your own expense, to tell us your stories and help us understand what industry trends mean for real people. You have not only given us a better understanding of how agricultural markets function and of the difficulties facing farmers and others in the agricultural sector, but also reinforced the importance of our efforts to promote competitive agricultural marketplaces.

We have already begun to take action across both our Departments to begin to address the many issues we have discussed. As you know, these workshops were the first of their kind to be held jointly by the Justice and Agriculture Department. As we discovered bottlenecks, we have sought to ease them. Recognizing that there is no one clear solution to the many problems we have heard, we have instituted another first. We have established a working task force made up of members from the USDA, the Antitrust Division, and now the Civil Division to jointly look at these issues to assure that all available resources are brought to bear. We have also continued our input and guidance to the USDA as it devised rules under the Packers and Stockyards Act.

We will continue working with the variety of stakeholders with whom we have been engaged throughout the past year. Each of us—federal agencies, state governments, private corporations, and producers—has a stake in an open and competitive agriculture industry, and the Antitrust Division has rededicated itself to doing its part. Government does not have all the answers to the challenges faced by rural America, but it can play an important role.

Thank you.